

Memorandum

To : Marley Hart, Executive Office
Occupational Safety & Health Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, Ca. 95833

Date: March 25, 2013

From : Department of Industrial Relations
Division of Occupational Safety and Health

Ellen Widess, Chief

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Subject : Evaluation Report – OSHSB Petition No. 532

This memorandum is in response to Petition #532, which was received from the OSH Standards Board by the Division on December 31, 2012. The Petition was originated by William Loupe, Safety Consultant, and requested a clarification of the language in Title 8 California Code of Regulations (CCR), Chapter 4, Subchapter 7, Article 2, Section 3212(f).

Review of Petition

The petitioner questions why fall protection is necessary if the glazed surface has been tested and documented by a registered engineer. The petitioner also cited an inspection where an Order Prohibiting Use (OPU) had been issued because the employees were working around skylights without any fall protection. Section 3212(f) addresses work on glazed surfaces which may include "roofs, vaults, canopies, or skylights."

This petitioner asked two questions in connection with §3212(f):

1. Is fall protection necessary where there has been an engineering evaluation of the glazed surface which demonstrates sufficient load-bearing properties of the glazed surface?
2. Can a citation and OPU be issued where the employer has documentation to show impact testing of the glazed surface?

Applicable Regulations

Title 8, California Code of Regulation, Section 3212(f) reads:
"Access shall not be permitted on glazed surfaces such as roofs, vaults, canopies, or skylights glazed with transparent or translucent materials unless an engineer currently registered in the State of California and experienced in the design of such glazed structures has certified that the surface will support all anticipated loads. Employees working on such surfaces shall be

protected by a fall protection system meeting the requirements of Section 1670 of the Construction Safety Orders." (*Emphasis added*).

A comparable Federal OSHA regulation is found at 29 CFR 1910.23(a)(4):

Every skylight floor opening and hole shall be guarded by a standard skylight screen or a fixed standard railing on all exposed sides.

Analysis

"Working on..." as used in Title 8, Section 3212, implies a work surface sufficiently large or accessible for an employee to use as a work area, i.e. standing on the transparent/translucent material to perform a task, as compared to standing close to the glazed surface, as would be the case of an employee doing roofing work next to a glazed skylight. The requirement for an engineer to certify that the material will support all anticipated loads does not certify the material as a safe working surface.

The requirement for fall protection specified in 8 CCR 3212(f) is not triggered by the load-bearing qualities of the work surface; it is triggered by the fall exposure hazard. The glazed surface is recognized as a relatively inappropriate work surface, even if its load bearing capacity is certified by an engineer. While a certified glazed surface may be able to withstand an inadvertent impact, the hazard potential is increased when it is used as the actual working surface; thus the requirement for fall protection remains.

The suitability of installed skylights to function as covers for the purposes of 8 CCR 3212(b) was discussed by the Advisory Committee convened by the OSHSB in 2004. While the Board Staff member noted that under certain conditions a skylight may be capable of supporting loads such as required in subsection (b), in the final language adopted by the Board work on or over skylights requires that workers shall use personal fall protection meeting the requirements of 8 CCR 1670.

In regards to the specific information provided by the petitioner regarding the issuance of a specific citation an OPU:

1. The documentation of load testing was not done by an engineer registered in the State of California, as required by Section 3212(f).
2. The employer in question was not working on the glazed surface, but was working on the roof in the proximity of unguarded skylights. The employer has the responsibility of determining if the skylights are certified, per §3212(f), and must take appropriate action if they are not (i.e. use of covers, guardrails, etc.)

Employers who believe that a citation issued by the Division is incorrect may appeal that citation to the Occupational Safety and Health Appeals Board. Therefore the Division will not offer an opinion on the specific case in question in regards to this petition.

Conclusion

It appears that the petitioner has misinterpreted the meaning of §3212(f), without differentiating "working on" and "working in proximity to" existing skylights. The Division does not view the language in §3212(f) as "vague and ambiguous", and does not support a change to this section. Additionally, the change suggested by the Petitioner would have the effect of making the State regulation less effective than the corresponding Federal OSHA regulation. There is nothing in the petition that suggests the existing regulations limit the ability of the regulated community to provide a safe work environment within the context of the existing fall protection regulations.

Recommendations from the Division

After review of the petition and examination of the rulemaking documents and pertinent Federal regulations, it is the recommendation of the Division that this petition should be **DENIED**.

cc: Deborah Gold
Patrick Bell
Dick Roberts

file: 8 CCR 3212